

Internal Revenue Service

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Date: DECEMBER 19, 2007

LEGEND:

Decedent =
Date 1 =
Date 2 =
Trust =

Partnership =
Skip Beneficiary 1 =
Skip Beneficiary 2 =
Skip Beneficiary 3 =
Skip Beneficiary 4 =
Skip Beneficiary 5 =
Skip Beneficiary 6 =
Skip Beneficiary 7 =
Skip Beneficiary 8 =
Skip Beneficiary 9 =
Skip Beneficiary 10 =
Skip Beneficiary 11 =

Dear

This is in response to the September 5, 2007 letter and other correspondence requesting a ruling on the application of the generation-skipping transfer tax to Trust.

The facts and representations submitted are as follows. On Date 1, Decedent executed Trust, which was revocable and unfunded until his death. Decedent died on Date 2. Under the terms of his will, his residuary estate passed to Trust. The transfer of Decedent's residuary estate to Trust was subject to federal estate taxes.

Article I, Paragraph C, of Trust provides that, after Decedent's death, the trustee is to transfer the trust assets to Partnership so that the only assets in Trust will be the

limited partner interests. The trustee is to distribute the limited partner interests to the then surviving beneficiaries and the issue of a deceased beneficiary per stirpes. However, the share for Skip Beneficiary 1 is to continue in trust.

Under Article I, Paragraph D, if a beneficiary is under a legal disability or has not attained age 45, his or her share is to be retained in trust, subject to his or her right to distributions based on a standard relating to health, maintenance, support and education, until he or she is not under a legal disability and has attained age 45, at which time the remaining trust estate is to be distributed to him or her, and the trust is to terminate, or until his or her death prior to the removal of the disability and attainment of age 45, at which time the remaining trust estate is to be distributed to the personal representative for the beneficiary's estate.

Article I, Paragraph E, provides that any portion of the trust estate passing to or for the benefit of a beneficiary that is not exempt from generation-skipping transfer tax is to be allocated to a separate trust (the "Non-Exempt Trust") for him or her. With respect to the beneficiary's Non-Exempt Trust, the beneficiary's parent that is related directly to Decedent is to have a general power of appointment exercisable only in the parent's will. The power is to be effective on the parent's death. If the parent fails to exercise the power, then on the parent's death, the trust estate of the beneficiary's Non-Exempt Trust is to be distributed to the beneficiary, or if he or she is then deceased, to his or her issue, per stirpes. If there are no such issue, then to the surviving beneficiaries and the issue of any deceased beneficiaries. A Non-Exempt Trust shall not terminate until after the death of the respective parent.

The designated beneficiaries of Trust are: Skip Beneficiary 1, Skip Beneficiary 2, Skip Beneficiary 3, Skip Beneficiary 4, Skip Beneficiary 5, Skip Beneficiary 6, Skip Beneficiary 7, Skip Beneficiary 8, Skip Beneficiary 9, Skip Beneficiary 10, and Skip Beneficiary 11, each of whom is a grandniece, grandnephew, or third cousin of Decedent. None of the Skip Beneficiaries were 45 years of age at Decedent's death. A Skip Beneficiary's parent is a niece, nephew, or second cousin of Decedent.

You have asked us to rule on whether the Non-Exempt Trusts for the Skip Beneficiaries are skip persons, within the meaning of section 2613(a)(2), and, accordingly, the transfers to Trust at Decedent's death were direct skips, within the meaning of section 2612(c), and, therefore, the transfers to Trust are subject to generation-skipping transfer tax.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer (GST). Section 2611 provides that the term "generation-skipping transfer" means a taxable distribution, a taxable termination, or a direct skip.

Section 2612(c)(1) provides that a direct skip is a transfer subject to federal estate or gift tax of an interest in property to a skip person.

Section 26.2612-1(d) of the Generation-Skipping Transfer Tax Regulations provides, in part, that a skip person is a trust if (i) all interests in the trust are held by skip persons; or (ii) no person holds an interest in the trust and no distributions, other than a distribution the probability of which occurring is so remote as to be negligible (including distributions at the termination of the trust) may be made after the transfer to a person other than a skip person.

Section 2652(c) provides, in part, that a person has an interest in property held in trust if (at the time the determination is made) such person (A) has a right (other than a future right) to receive income or corpus from the trust, or (B) is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a).

Section 26.2612-1(e)(1) provides that, for generation-skipping transfer tax purposes, an interest in trust exists if a person has a present right to receive trust principal or income or is a permissible current recipient of trust principal or income.

Section 2613(a) provides that the term “skip person” means (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust if all the interests in the trust are held by skip persons, or if there is no person holding an interest in the trust, and at no time after the transfer, may a distribution (including distributions on termination) be made from the trust to a non-skip person.

In this case, each Skip Beneficiary is two or more generations below the generation of the transferor (i.e., Decedent), and he or she is the sole beneficiary of his or her Non-Exempt Trust. Each Skip Beneficiary’s parent possesses a testamentary general power of appointment with respect to the Skip Beneficiary’s Non-Exempt Trust. That is, the parent may exercise the power at death to transfer the Non-Exempt Trust property remaining at the parent’s death to any person or entity, including the parent’s estate. The power of appointment granted to a parent does not include a present right to receive trust principal or income, and the parent is not a permissible current recipient of trust principal or income. Consequently, a parent’s testamentary power of appointment is not an interest in a respective Non-Exempt Trust, for generation-skipping transfer tax purposes.

Accordingly, based upon the facts submitted and representations made, we conclude that each Non-Exempt Trust is a skip person, within the meaning of section 2613(a), and Decedent’s transfers to the Non-Exempt Trusts are direct skips, within the meaning of section 2612(c), and, therefore, the transfers to Trust are generation skipping transfers subject to generation-skipping transfer tax.

Except as expressly provided herein, no opinion is expressed or implied

concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures
Copy for section 6110 purposes